

# MIAMI TODAY

WEEK OF THURSDAY, AUGUST 13, 2009

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## Bankruptcy risky way for condo board to dump bad lease

BY MARILYN BOWDEN

The recent bankruptcy of a condo association on Miami Beach is not necessarily a sign of things to come, say attorneys who work with condominium and homeowner associations, nor is bankruptcy a desirable option for most associations.

In June the association for the 502-unit *Maison Grande*, 6039 Collins Ave., filed for Chapter 11 bankruptcy.

*Maison Grande*, built in the 1970s, petitioned for bankruptcy to get rid of a burdensome recreational lease that was more than 40 years old, said Martin Schwartz, a partner at Bilzin Sumberg. Recreational leases – long-term leases in which a developer leases recreational facilities such as a pool or tennis courts to the association – are no longer allowed under Florida condo law, he said, “because they were abused. One of the principal reasons they filed for bankruptcy was to get rid of this lease.”

The financial difficulties of newer condo associations, Mr. Schwartz said, usually stem from their inability to collect maintenance fees and special assessments from their members.

Historically, said Donna Berger, managing partner at Katzman Garfinkel Rosenbaum and executive director of the Community Advocacy Network, condominium associations had no need to consider bankruptcy.

“That’s why the associations were traditionally so attractive to banks,” she said. “But in some associations now, 90% of members are delinquent, and the other 10% cannot afford to cover all expenses. So more and more are looking into bankruptcy as an option.”

But it’s not easy for an association to successfully file for bankruptcy, said Dennis

Eisinger, managing partner of Eisinger, Brown, Lewis & Frankel and an adjunct professor of condo and community association law at the University of Florida College of Law. "Theoretically, because the associations have the ability to assess at any point," he said, "until they get to the point where there is zero equity – that is, they keep on assessing and no one pays – they should not be able to file."

There are exceptions, Mr. Eisinger said. One would be to file in order to cancel adverse contracts such as Maison Grande's recreational lease – "though if they do cancel it, members won't have the use of the pool and the clubhouse."

Another reason, he said, might be to forestall an immediate cutoff by utility companies, since as soon as the petition is filed those services can't be cut off.

But in general, "it's costly to do. I think it's a remedy that might be very rarely applicable," Mr. Eisinger said.

Ms. Berger agreed that bankruptcy "should be the absolute last resort. There are a lot of associations who think they've done everything they can do, but they really haven't. There are many strategies out there.

"They can go to vendors and say they need to renegotiate. They can cut back on some services. They can go from professionally managed to self-managed. There might be money owed to the association, or it might be entitled to lower taxes, which would give people more money to pay assessments. There are companies out there who will help with this."

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One is Community Association Preservation and Stabilization, or CAPS, which focuses on getting associations through hard times, said Allen Gelman, president of real property assessments.

"We do a complete analysis to look for the different things that will help them save money or recover monies they may be entitled to that they are not aware of," he said, "and we help them implement those things."

CAPS will also do analyses for individual members within the association.

"The association is only as strong as its members," Mr. Gelman said. "If we can help take some of the pressure off the members, we can help the community."

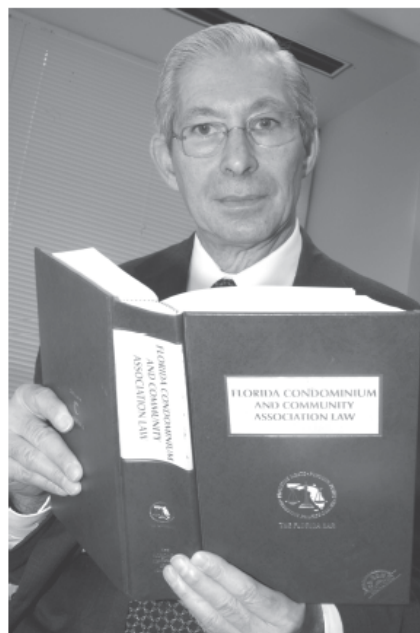


Photo by Marlene Querni

A condo association may file for bankruptcy as a way to break a recreational lease, says Martin Schwartz, partner at Bilzin Sumberg.